

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. : 674/2004
Reserved on: : 23.4.2007
Date of decision : 11.5.2007

Tilak Raj	Versus	...Petitioner.
National Hydro Electric Power Corpn. Ltd. & others.		...Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?¹.

For the petitioners : Mr.K.D. Sood, Advocate

For the respondents : Mr. K.D. Sridhar, Advocate.

Rajiv Sharma, J. (Oral)

By Medium of this petition, the petitioner has sought the following relief(s);

- a) "Direct the respondent Nos. 1 to 3 to grant the petitioner similar benefit and perks as has been granted to the respondent Nos. 3 to 7 and in any event, grant the petitioner the benefit as has been granted to the respondent Nos. 4 to 7 w.e.f. 5.9.1985 the date when the petitioner was appointed as Work Assistant-III in the work-charge capacity by stepping up the pay and perks of the petitioner.
- b) In the alternative, direct the respondent Nos. 1 to 3 to step up the pay of the petitioner so as to protect his pay and perks above respondent Nos. 4 to 7 by counting his service for purposes of seniority from the date of his initial appointment as Work Assistant etc.
- c) Direct the respondent Nos. 1 to 3 to maintain the seniority of the petitioner above the respondent Nos. 4 to 7."

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*

The brief facts necessary for the adjudication of the present petition are that the petitioner was appointed as Work Assistant Grade-III in the month of September, 1985 and was subsequently promoted to the post of Assistant Grade-III on 1.1.1991. He was promoted on 1.1.1996 to the post of Assistant Grade-II and was finally promoted to the post of Assistant Grade-I on 1.1.2001. The petitioner has qualified the test as per the Recruitment and Promotion Rules but the respondent Nos. 4 to 7 could not qualify the tests as prescribed under the Rules. Since the respondent Nos. 4 to 7 could not qualify the tests required for induction in the regular cadre, they continued to work on work-charge basis. The respondents-corporation has issued two office orders dated 27.9.2002 and 31.12.2002 respectively on the basis of which respondent Nos. 4 to 7 were re-designated in the category and grade shown in office orders. The petitioner made a detailed representation after the issuance of communications dated 27.9.2002 and 31.12.2002 to the Director (Personnel) on 28.10.2002. The request of the petitioner made in the representation and similarly situated employees was turned down without speaking order on 1st August, 2003.

The main contention of Mr. K.D. Sood, Advocate for the petitioner was that on the basis of communications dated 27.9.2002 and 31.12.2002 i.e. Annexures P-4 and P-5, respondent Nos. 4 to 7 have been re-designated and have also been held entitled to monetary benefits. Mr. K.D. Sood, Advocate further submitted that since the petitioner had been promoted in the regular stream, he could not be put in disadvantageous position vis-à-vis the respondent Nos. 4 to 7, who till the date of issuance of Annexures P-4 and P-5 were enjoying only the work-charge status.

Mr. K.D. Sridhar, Advocate for the respondents has supported the issuance of Annexures P-4 and P-5 on the basis of Annexures R-1

and R-2 dated 23.12.1999 and 26.6.2002. Mr. K.D. Sridhar, Advocate has vehemently argued that the decision to re-designate the respondent Nos. 4 to 7 on the basis of Annexures P-4 and P-5 is in pursuance to the policy decision and the same cannot be judicially reviewed by this Court.

I have heard the parties and perused the record.

It is admitted position that the petitioner had been granted regular promotions to the post of Assistant Grade-III, Assistant Grade-II and Assistant Grade-I on 1.1.1991, 1.1.1996 and 1.1.2001 strictly in conformity with Annexure P-2. The petitioner had qualified all the tests prescribed under the promotion policy and Rules for the purpose for effecting promotions. The respondent Nos. 4 to 7 though were granted opportunity to qualify the tests, have failed to do so. The respondent Nos. 1 and 2 on the basis of Annexures R-1 and R-2 have decided to re-designate the respondent Nos. 4 to 7 and have granted them parallel scale/grade. The effect of issuance of Annexures P-4 and P-5 is that the petitioner is getting less pay vis-à-vis respondent Nos. 4 to 7. The petitioner has sought the positive relief by not seeking the quashing of Annexures P-4 and P-5 by claiming that he be paid the similar benefits and perks as have been granted to respondent Nos. 4 to 7 with effect from 5.9.1985. The alternative prayer of the petitioner is also to the effect that his pay be stepped-up and his seniority be maintained above respondent Nos. 4 to 7.

There is no dispute that terms and conditions of an employee can always be altered. In the present case the respondent Nos. 4 to 7, who were merely work-charge employees have been re-designated with anterior date, but while re-designating the respondent Nos. 4 to 7, the rights of the petitioner to get higher salary and seniority on the basis of his being considered always in the regular stream could not be put to

jeopardy. The employer has always to see to it that while granting a particular benefit, as is in the present case to the work-charge employee, that they do not gain more advantage or superior position vis-à-vis the regularly appointed employees.

The petitioner has undergone the rigours of promotion policy while being considered for promotion, but the respondents Nos. 4 to 7, who were merely work-charge employees, have been granted the re-designation from anterior date with better perks. The representation made by the petitioner has been rejected without a speaking order. All the orders passed, even on administrative side, are to be speaking orders.

The question whether the policy decision can be reviewed by the Courts or not is no more *res integra*. The Hon'ble Supreme Court in **Union of India Vs. Dinesh Engineering Corporation (2001) 8 SCC – 491** has held as under:

“Of course, the Supreme Court has held in more than one case that where the decision of the authority is in regard to a policy matter, the Supreme Court will not ordinarily interfere. But then this does not mean that the courts have to abdicate their right to scrutinize whether the policy in question is formulated keeping in mind all the relevant facts and whether the said policy can be held to be beyond the pale of discrimination or unreasonableness, on the basis of the material on record. There can be no doubt that an equipment of the nature of a spare part of a governor which is used to control the speed in a diesel locomotive should be a quality product which can adhere to the strict scrutiny/standards of the Railways, but a perusal of the letter dated 23.10.1992 does not show that the Board was either aware of the existence of the writ petitioner

or its capacity or otherwise to supply the spare parts required by the Railways, an ignorance which is fatal to its policy decision. Any decision, be it a simple administrative decision or a policy decision, if taken without considering the relevant facts, can only be termed as an arbitrary decision and violative of the mandate of Article 14 of the Constitution.”

Similarly, Hon'ble Supreme Court in **Kailash Chand Sharma Vs. State of Rajasthan (2002) 6 SCC – 562** has held under:

“Undoubtedly the impugned circular is the product of the policy decision taken by the State Government. Even then, as rightly pointed out by the High Court, such decision has to pass the test of Articles 14 and 16 of the Constitution. It should be free from the vice of arbitrariness and conform to the well-settled norms, both positive and negative, underlying Articles 14 and 16, which together with Article 15 form part of the constitutional code of equality.”

This Court is of the view that the policy decision, if violative of Article 14 and 16 of the Constitution, can be judicially reviewed. In the present case though the petitioner has not assailed the issuance of Annexures P-4 and P-5 on the basis of which the respondent Nos. 4 to 7 have been granted the benefits, but this Court has to ensure that those Annexures are in conformity with Articles 14 and 16 of the Constitution of India. The issuance of Annexures P-4 and P-5 though have granted benefits to the respondent Nos. 4 to 7 but vis-à-vis the petitioner they have affected his rights. Accordingly Annexures P-4 and P-5 will be violative of Articles 14 and 16 of the Constitution of India to the extent they are detrimental to the petitioner.

Consequently the writ petition is allowed. The respondent-corporation is directed to grant the petitioner similar benefits and perks as have been granted to respondents No.4 to 7 with effect from 5.9.1985 and rank him senior to respondent Nos. 4 to 7 in the seniority list within a period of eight weeks.

There shall be no order as to costs.

(Rajiv Sharma), Judge

May 11, 2007

Awasthi